

BEYOND SYSTEMS, INC. )  
Plaintiff )  
 )  
v. )  
 )  
WORLD AVENUE USA, LLC, et al.)  
Defendants )  
\_\_\_\_\_ )

Case No.PJM 08 cv 0921

**DECLARATION OF HOMER APPLEBY, ESQ.**

I, HOMER APPLEBY, hereby declare as follows:

1. My name is Homer Appleby. I am over eighteen (18) years of age. The facts set forth in this Declaration reside within my personal knowledge.
2. As General Counsel to World Avenue Holdings, LLC ("Holdings") and World Avenue USA, LLC ("WAUSA"), I am primarily responsible for the legal aspects of this case.
3. On November 30<sup>th</sup>, I underwent hip replacement surgery. The operation was preceded with a week of preoperative exams and tests. Prior to my leaving, it was expected that I would be able to return my full-time attention to my responsibilities, including this case, during December. In anticipation of my returning to work full time by the latter part of December 2009, WAUSA agreed to exchange reciprocal discovery on January 8, 2010 and to make available for deposition a representative of WAUSA on the narrow topics specified in the ESI Agreement.
4. Contrary to my expectation and that of WAUSA's outside counsel, due to my medical condition, I was unable to return to work in December 2009 and have not been substantively involved in the case during my absence. I have been unable to participate in merits

discovery or the WAUSA ESI Deposition. Prior to my departure, I was integrally involved in those discovery events.

5. I returned to work last week on a part-time basis, and, due to continuing outpatient physical therapy I am unable to dedicate my full attention to the merits discovery and ESI Deposition.

6. I request that the Court grant WAUSA's and Holdings' motion for extension. I believe that my advice and participation is extremely valuable because I am one of the few remaining persons associated with World Avenue at the time of the events alleged in the Amended Complaint, which dates back to 2005. Absent an extension of the time requested, I believe that WAUSA and Holdings will suffer irreparable harm by being deprived of the full time advice of their legal counsel prior to the ESI deposition and the service of merits discovery responses.

I hereby declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

January 11, 2010.

  
HOMER APPLABY